No. 642

MAY 10 1901

JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

Motion to Advance.

ROBERT C. MOTHERWELL, Jr., Keeper of the Philadelphia County Prison, and CAPTAIN VLADIMIR BEHR, Master of the Russian Cruiser Variag,

Appellants,

AGAINST

THE UNITED STATES OF AMERICA, *ex rel.* LEO ALEXANDROFF,

Appellee.

Notice of Motion.

Filed May 10, 1901.

Please take notice, that on Monday, the 13th day of May, 1901, at the opening of the Court on that day, or as soon thereafter as counsel can be heard, the motion, of which the annexed is a copy, will be submitted to the Supreme Court of the United States for the decision of the said Court thereon.

Dated New York, May 6th, 1901.

PAUL FULLER,
JOHN F. LEWIS,
Counsel for Appellant.

To

Messrs. HARRIS & HASSLER,
Counsel for Appellee;

SAMUEL DICKSON, Esq.,
Counsel for the William Cramp & Sons Ship & Engine Building Company.

SUPREME COURT OF THE UNITED STATES.

ROBERT C. MOTHERWELL, Jr., Keeper of the Philadelphia County Prison, and CAPTAIN VLADIMIR BEHR, Master of the Russian Cruiser Variag,

Appellants,

AGAINST

THE UNITED STATES OF AMERICA, *ex rel.* LEO ALEXANDROFF,

Appellee.

Motion.

And now comes William A. Tucker, Vice Consul of the Empire of Russia at Philadelphia, Pennsylvania, by Paul Fuller and John F. Lewis, his counsel, and moves this Court to advance the above-entitled cause upon the Calendar and to set the same down for argument for a day certain.

This case has been removed to this Court by virtue of a writ of *certiorari* duly issued to the Circuit Court of Appeals for the Third Circuit, directing it to send the record of the proceedings in this cause to this Court for its review and determination.

This proceeding was instituted by Leo Alexandroff by a petition of *habeas corpus*. At the time the petition was verified and the writ issued Alexandroff was a member of the Russian Navy and one of the crew of the Russian Cruiser "Variag." He deserted from the crew, was arrested and restored by a United States commissioner to the control of his Captain.

In addition to the fact that this is a *habeas corpus* proceeding, it involves an examination of the jurisdiction of Consular Courts, a construction of the Treaty between the Empire of Russia and the United States of America, an enunciation of a rule for the guidance of

5 the officials of the United States in their relations with foreign governments and a determination as to whether the rules of comity existing between friendly nations did not and do not require that the Courts of this country should not in any way interfere to release a man from service in a foreign navy.

Dated New York, May 6th, 1901.

PAUL FULLER,
JOHN F. LEWIS,
Counsel for Appellant.

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Office Supreme Court
FILED
OCT 23 1901
JAMES H. McKENNEY,
Clerk

TREATY WITH RUSSIA, 1832.

U. S. STATUTES AT LARGE. VOL. VIII, p. 444.

ART. VIII.

"The Consuls, Vice Consuls, and Commercial "Agents shall have the right, as such, to sit as judges "and arbitrators in such differences as may arise be- "tween the captains and crews of the vessels belonging "to the nation whose interests are committed to their "charge, without the interference of the local authori- "ties, unless the conduct of the crews or of the captain "should disturb the order of the tranquility of the "country, or the said Consuls, Vice-Consuls, or Com- "mercial Agents should require their assistance to "cause their decisions to be carried into effect or sup- "ported. It is, however, understood that this species "of judgment or arbitration shall not deprive the con- "tending parties of the right they have to resort, on "their return, to the judicial authority of their coun- "try."

ART. IX.

"The said Consuls, Vice-Consuls, and Commercial "Agents are authorized to require the assistance of the "local authorities for the search, arrest, detention and "imprisonment of the deserters from the ships of war "and merchant vessels of their country. For this pur- "pose they shall apply to the competent tribunals, "judges and officers, and shall in writing demand said "deserters, proving, by the exhibition of the registers "of the vessels, the rolls of the crews, or by any other "official documents, that such individuals formed part "of the crews; and this reclamation being thus sub- "stantiated, the surrender shall not be refused.

"Such deserters, when arrested, shall be placed at "the disposal of the said Consuls, Vice-Consuls or Com- "mercial Agents, and may be confined in the public

" prisons, at the request and cost of those who shall
" claim them, in order to be detained until the time
" when they shall be restored to the vessels to which
" they belong, or sent back to their own country by a
" vessel of the same nation or any other vessel whatso-
" ever. But if not sent back within four months from
" the day of their arrest, they shall be set at liberty,
" and shall not be again arrested for the same cause."